

AN ORDINANCE 2006 - 01 - 19 - 0089

**GRANTING A LICENSE TO USE PUBLIC RIGHT-OF-WAY ON,  
OVER, AND UNDER EAST CROCKETT AND LOSOYA  
STREETS FOR NUMEROUS ENCROACHMENTS AT THE  
RAINFOREST CAFE IN NCB 914 IN DISTRICT 1 FOR A 25-  
YEAR TERM AND THE CONSIDERATION OF \$52,792.50**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City hereby authorizes and directs granting, on terms consistent with prior ordinances, a license to the Rainforest Cafe to use public rights-of-way around the Chandler Building, 110 E. Crockett, in Council District 1, for a 25-year term. The consideration for the license is \$52,792.50.

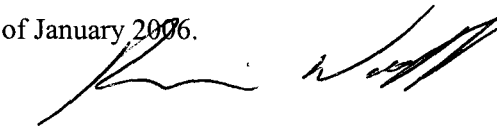
**SECTION 2.** The City further hereby authorizes and directs the City Manager or her designee: (A) to execute and deliver (1) a License Agreement substantially in the form attached as Exhibit A and (2) all other documents necessary or convenient to effect the subject transaction; and (B) otherwise to do all things necessary or convenient to effect the transaction, including agreeing to non-material changes to the terms thereof.

**SECTION 3.** Funds in the amount of \$52,792.50 are to be deposited into internal order 224000000002, General ledger 4202410 when received from the Rainforest Café.

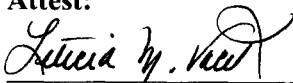
**SECTION 4.** These financial allocations are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance

**SECTION 5.** This ordinance is effective as of January 29, 2006.

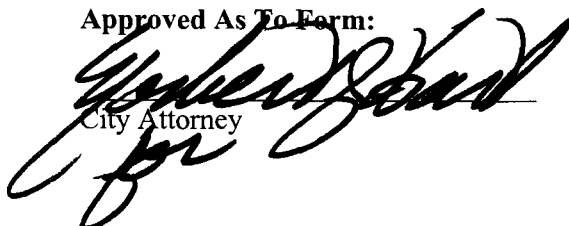
**PASSED AND APPROVED** this 19<sup>th</sup> day of January 2006.

  
M A Y O R  
PHIL HARDBERGER

Attest:

  
\_\_\_\_\_  
City Clerk

Approved As To Form:

  
\_\_\_\_\_  
City Attorney

# Agenda Voting Results

**Name:** 17.

**Date:** 01/19/06

**Time:** 03:30:16 PM

**Vote Type:** Multiple selection

**Description:** An Ordinance granting a license to use public right-of-way on, over, and under East Crockett and Losoya Streets for numerous encroachments at the Rainforest Cafe in NCB 914 in District 1 for a 25-year term and the consideration of \$52,792.50. [Presented by Rebecca Waldman, Director, Asset Management; Erik J. Walsh, Assistant to the City Manager]

**Notes:** Motioned: RICHARD PEREZ    Seconded: PATTI RADLE    Notes:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

## Exhibit A

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### License Agreement (Landry's—Rainforest Cafe)

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This License Agreement ("License") is entered into by and between the City of San Antonio, a Texas municipal corporation, as "Licensor," acting by and through its City Manager, or the designee, pursuant to the Authorizing Ordinance and the Licensee named below.

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#### 1. Pertinent Information.

##### Authorizing Ordinance (No. and Date):

**Project No.** SP 1191

**Licensee:** Rainforest Café, Inc.

**Licensee's Address:** % Jeff Cantwell, Sr. Vice President, Development,  
Landry's Restaurants, Inc., 1510 W. Loop S., Houston,  
Texas 77027

**Term:** 25 Years

**Fee:** \$52,792.50

**Premises:** Public right-of-way around the Chandler Building, 110 E. Crockett, San Antonio, Bexar County, Texas, which is generally depicted on **Exhibit A**, incorporated herein by reference for all purposes as if it were fully set forth.

**Scope of License:** For the purpose of maintaining and using and in some cases constructing the improvements on **Exhibit B**, incorporated herein by reference for all purposes as if fully set forth. The only items to be constructed are labeled on the exhibit as "new." Items 4-8, 13, and 27 on Exhibit B are excluded from the Scope of License.

**Effective Date:** The effective date of the Authorizing Ordinance

**Licensor's Address:** City Clerk, City of San Antonio, P.O. Box 839966/2nd Floor, City Hall, San Antonio, Texas 78283-3966

## **2. Grant of License.**

Licensor grants Licensee a license ("License") to use the Premises within the Scope of the License, but only within such scope. This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee.

## **3. Restrictions on Use/Recording**

**3.01** This License does not grant Licensee authority to use any area beyond the Premises.

**3.02 Licensor's Superior Interest.** This License grants only a privilege to use the Premises and is revocable by Licensor. This instrument does not convey any real property interest. Licensor reserves the right to enter upon the Premises at any time for asserting its real property interest or for other purposes.

**3.03 Recording.** A Memorandum of License Agreement, incorporated herein as **Exhibit C**, will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee is responsible for recording fees.

## **4. License Fee**

Licensee must pay the Fee to Licensor in a one-time, lump-sum, or before the Effective Date of this License. The License Fee must be paid at the office of the Department of Asset Management, 114 W. Commerce St., 2nd Floor (c/o Property Disposition Manager), San Antonio, Texas 78205.

## **5. Construction, Maintenance, and Operations**

**5.01 Costs.** Licensee is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed in the Premises, (hereafter "Licensee's Responsibilities").

**5.02 No Liability.** Licenser assumes no liability or no expense under this License. Licenser is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licenser in the vicinity.

**5.03 Relocation.** If Licenser's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

**5.04 Maintenance.** Licensee, at its sole cost and expense, must maintain all improvements constructed or installed by Licensee. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all federal, state, or local laws, rules, or regulations.

**5.05 No Power to Bind.** Licensee cannot not bind or permit other to bind Licenser for payment of money or for any other obligation.

**5.06 Contractors and Subcontractors.** Licensee must promptly pay anyone who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licenser may treat it as an event of default and terminate this License by delivering 10 days prior written notice to Licensee. Licensee remains obligated to clear the lien without cost to Licenser even after termination.

## **6. Specific Conditions**

Licensee is bound by the conditions described in the "**Letter of Agreement**" appearing at **Exhibit D**, which is incorporated herein for all purposes as if it were fully set forth.

## **7. Indemnity**

**7.01 Licensee must indemnify Licenser and its elected officials, employees, agents, and representatives of and from any all loss, cost, liability, or expense, including court costs and attorneys fees, arising from or relating to (a) the grant of this License, (b) Licensee's activities under this License, (c) or Licensee's activities or presence on or about the Premises, whether or not authorized by this License. Licensee need not indemnify Licenser for challenges to Licenser's authority to grant this License.**

**7.02 Nothing in this License waives any governmental immunity or other defenses available to Licenser under Texas law and without waiving any defenses of the parties under Texas Law.**

### **7.03 This indemnity expressly covers the consequences of indemnitees' own negligence.**

**7.04 Licensee must promptly advise Licensor in writing of any claim or subject to this indemnity and must investigate and defend such claim at Licensee's cost. Notwithstanding any insurance policy, Licensor may, at its own expense, participate in the defense without relieving Licensee of any of its indemnity obligations.**

## **8. Insurance**

**8.01** Without limiting Licensor's rights to indemnity, Licensee must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company or provide evidence of self-insurance, in the following types and amounts:

	<b>Type</b>	<b>Amount</b>
1.	Worker's Compensation during the performance of improvements to the Premises or an approved alternate plan at other periods during the Term.	Statutory, with a waiver of subrogation in favor of Licensor
2.	Employers' Liability during improvements to the Premises or an approved alternate plan at other periods during the Term.	\$500,000 per category, with a waiver of subrogation in favor of Licensor
3.	Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed (d) Personal Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property (g) Broad Form Property Damage	For Bodily Injury and Property Damage: \$1,000,000 per Occurrence, \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.
4.	Property Insurance -- for physical damage to the property of Licensee including improvements and betterments to the Premises.	Coverage for a minimum of 80% of the actual cash value of the improvements.

Any substitute for Workers' Compensation and Employer's Liability must be approved in advance by Licensor's Risk Manager.

**8.02** Licensor's Risk Manager may reasonably modify the requirements set forth above if he determines that such modification is in the Licensor's best interest. If Licensee believes the requested change is unreasonable, Licensee has 60 days to give notice of termination. The termination provisions hereof then apply.

**8.03** With respect to the above required insurance, each insurance policy required by this License must contain the following clauses:

"No insurance or self-insurance provided by Licensee can be canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

- (a) City Clerk, City of San Antonio  
City Hall/Military Plaza  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

**And**

- (b) Department of Asset Management  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Property Disposition Manager"

"Any insurance or self-insurance provided by Licensee is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, not in contribution with, insurance provided by this policy."

**8.04** Each insurance policy required by this License, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, must contain the following clause:

"The City of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds."

**8.06** Licensee must deliver to Licensors, within 30 days after the Effective Date, endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. Licensee must deliver to Licensors documentation acceptable to Licensors confirming the authority of those signing the endorsements.

**8.07** The Notices and Certificates of Insurance must be provided to:

- (a) City Clerk, City of San Antonio  
P.O. Box 839966/2nd Floor, City Hall  
San Antonio, Texas 78283-3966  
Attn: Risk Manager

**And**

- (b) Department of Asset Management  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attn: Property Disposition Manager

**8.08** This License does not limit Licensee's liability arising out of or related to the Premises or Licensee's activities thereon.

**8.09** Licensee waives all claims against Licensor for injury to persons or property on or about the Premises, whether or not caused by Licensor's negligence.

**9. Termination**

**9.01** Licensor may terminate this License at any time before expiration by giving Licensee 30 days written notice.

**9.02** Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor, at its option, may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of the improvements and appurtenances and restore the Premises, at Licensee's sole cost, to original condition. Improvements or appurtenances not removed within 90 days after termination of the License, whether by expiration or otherwise, become the property of Licensor. Licensor, may without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

**10. Assignment/Sublicensing**

This License cannot be assigned or sublicensed by Licensee, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days prior written notice before assigning or sublicensing to a parent or subsidiary. Licensee cannot lease or sublease the Premises.

**11. Condemnation**

If the Premises are taken, in whole or in part, by eminent domain, then this License, at the option of Licensor, ceases on the date title to the land so taken or transferred vests in the condemning authority. Licensee waives all rights to any condemnation proceeds. Licensee may seek a separate condemnation award.



## **12. Attorney's Fees and Court Costs.**

In any action in which Licensee is found to have materially defaulted hereunder, Licenser can recover from Licensee its reasonable attorney's fees.

## **13. Taxes and Licenses**

Licensee must pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes, license fees, permit fees, debts, and obligations, now or hereafter levied on the Premises or on Licensee or its property.

## **14. Existing Vaults**

The parties acknowledge the presence in the public right-of-way of an electrical service vault, a water service vault, and a gas service vault. These vaults serve Licensee and do now or may in the future serve others as well. Licensee does not need a license to obtain electrical, water, and gas service from these vaults, and its rights to receive such service survive termination of this License. This acknowledgment survives termination of this License.

## **15. Miscellaneous Provisions**

**15.01. Relationship Limited.** This instrument creates only the relationship of Licenser and Licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.

**15.02. Nondiscrimination.** Licensee must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the Premises.

**15.03. Release From Liability/Notice of Sale.** If Licenser transfers ownership of the Premises, Licenser will have no liability or obligation relating to the period after transfer. Licenser's transferee will succeed to all Licenser's rights hereunder.

**15.04. Subsequent Voluntary Transfer by Licenser.** Upon written request, Licensee must, in writing,

(a) subordinate this License to the interest of any transferee of the Premises and to the lien of any mortgage or deed of trust, now or hereafter in force encumbering the Premises and to all advances made or hereafter to be made upon the security thereof

(b) attorn to any transferee of Licenser and

(c) if Licensee is not in default hereunder, execute and deliver a Certificate of Estoppel and Subordination, Non-Disturbance and Attornment Agreement in

form and substance acceptable to Licensor, if the transferee agrees not to disturb Licensee's possession of the Premises.

**15.05. Foreclosure.** Licensee must attorn to the purchaser at any foreclosure sale and recognize such sale and such purchaser as Licensor, if the purchaser recognizes Licensee's rights under this License and agrees not to disturb Licensee's possession of the Premises so long as Licensee is not in default hereunder.

**15.06. Licensee Financing.** Licensee may encumber Licensee's personal property located within the Premises, and any lien of Licensor against Licensee's personal property (whether by statute or under the terms of this License) is subject and subordinate to such security interest. Licensor will execute such documents as Licensee's lenders may reasonably request in connection with any such financing, if the documents do not modify the rights and obligations of this License. The City Manager of the City of San Antonio or a designee, including the Director, Department of Asset Management, is authorized hereunder to execute such documents, without the necessity of a specific City of San Antonio ordinance. But if the documents modify the rights and obligations of the License, then the documents can be approved only by specific ordinance.

**15.07. Lien For License Fee, Taxes, Fees And Other Charges.** Licensee grants Licensor a security interest in all Licensee's property now or hereafter placed on the Premises. The security interest secures payment of the Fee and all taxes, fees, and other charges to be paid by Licensee hereunder. Encumbered property may be disposed of free of the security interest in the ordinary course of business. At Licensor's request, Licensee must execute and deliver to Licensor a financing statement. This security interest is cumulative of any liens provided by law.

**15.08. Consent/Approval Of Licensor.** Licensor's consent and approval may be granted by the Director, Department of Asset Management, City of San Antonio ("City"), as designee of the City Manager, unless the City Charter requires that the City Council consent by the passage of a City ordinance.

**15.09. Conflict of Interest.**

(a) The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of

the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

(b) Contractor warrants and certifies as follows:

(i) Contractor and its officers, employees and agents are neither officers nor employees of the City.

(ii) Contractor has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

(c) Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

**15.10. Yielding Up.** Licensee must, at termination, whether by expiration or otherwise, yield the Premises up peacefully, including any improvements and fixtures (other than trade fixtures).

**15.11. Authority To Execute.** The party or parties executing this License on behalf of Licensee personally warrant that each of them has full authority to do so.

**15.12. Acknowledgment Of Reading.** The parties acknowledge that they have thoroughly read this License, including any exhibits or attachments, and have sought and received whatever advice and counsel was necessary to form a full and complete understanding of their rights and obligations and, having so done, execute this License freely and voluntarily.

**15.13. Applicable Law.** This License is entered into in San Antonio, Bexar County, Texas. **The Construction Of This License And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

**15.14. Severability.** If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

**15.15. Successors.** This License inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

**15.16. Integration.** **This Written License Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of**

**Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties.  
There Are No Oral Agreements Between The Parties.**

**15.17. Modification.** This License may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

**15.18. Third Party Beneficiaries.** This License is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries.

**15.19. Notices.** Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

**15.20. Pronouns.** In construing this License, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License, not to any particular provision of it.

**15.21. Captions.** Paragraph captions in this License are for ease of reference only and do not affect the interpretation hereof.

**15.22. Counterparts.** This License may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this License, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

**15.23. Further Assurances.** The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this License

**15.24.. Ambiguities Not to Be Construed against Drafter.** Any ambiguities found in this License must be resolved without resort to construction against the drafter.

Executed to be effective 10 days after passage of the ordinance referenced on Page 1, which authorized this License, by the San Antonio City Council ("Effective Date").

**Licensors:**

**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Licensee:**

**Rainforest Café, Inc.,** a Texas  
corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

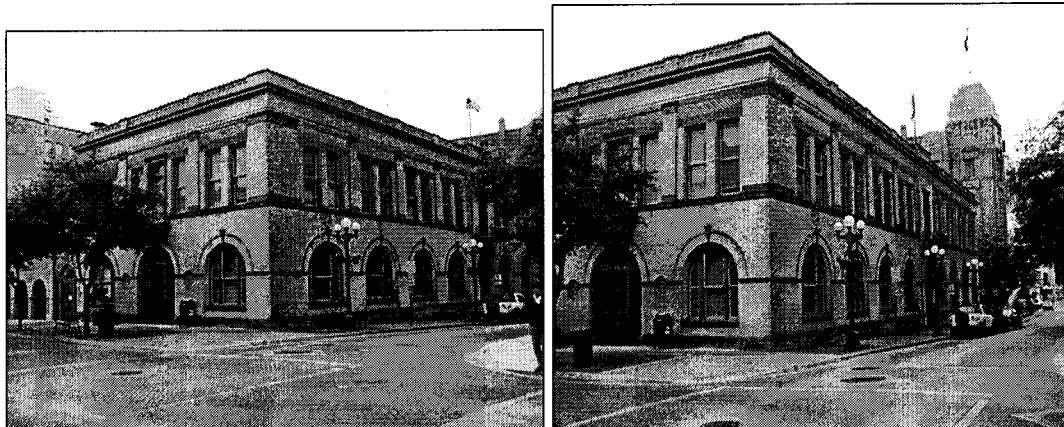
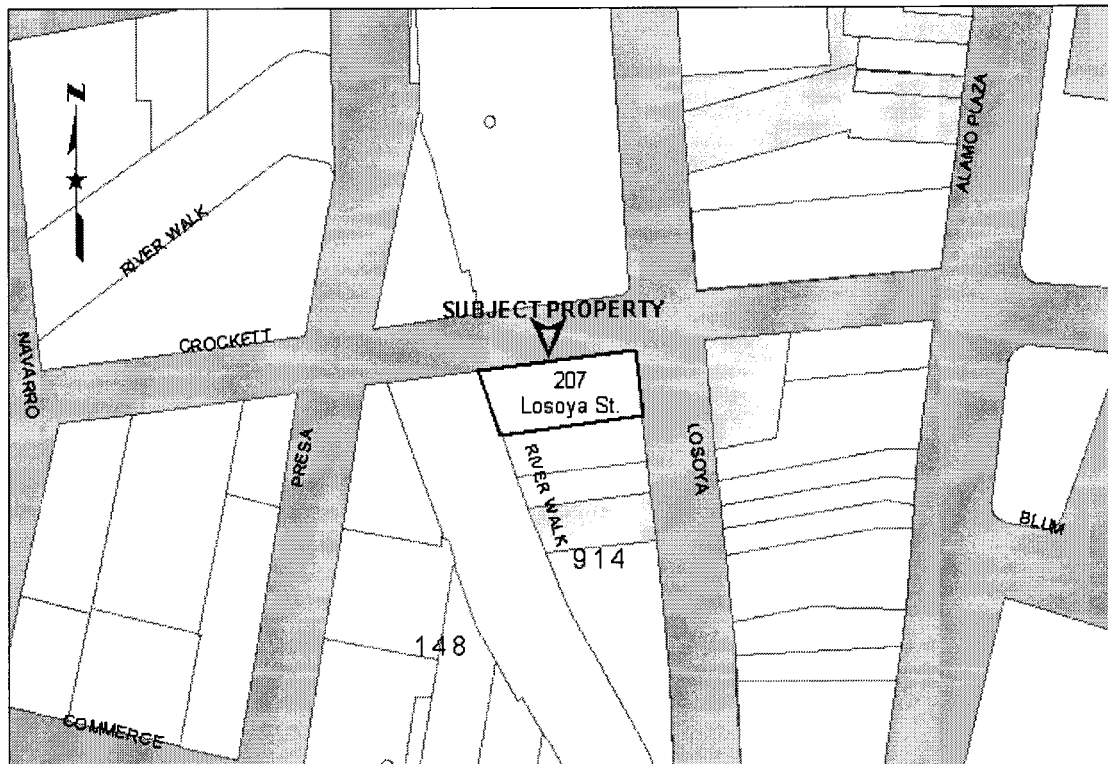
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney



View of northeastern corner of subject property

# **Exhibit A**

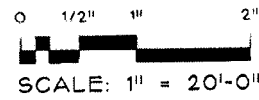
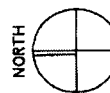
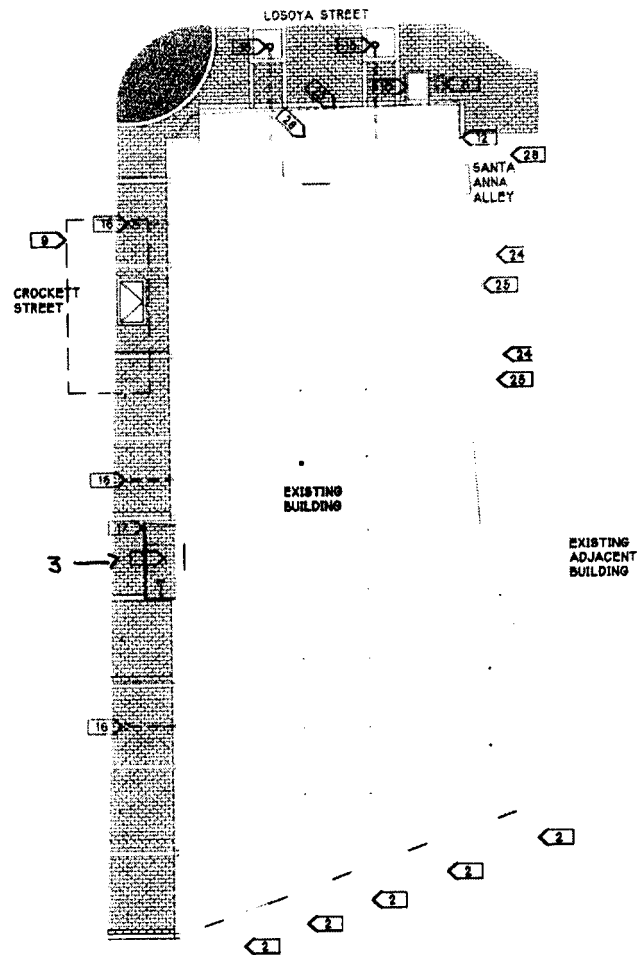
S. P. No. 1191

Petitioner: Landry's Restaurants, Inc.

**Exhibit B**

	Key No.*	Description of Licensed Items
1.	1	Existing fire escape (5' X 33')
2.	2	Five existing balconies (7' X 4')
3.	3	Existing door swing area (12.5 square feet)
4.	12	Existing hose bib
5.	14	Existing street lights
6.	15	New exterior lighting within trees
7.	16	New conduits for street lights
8.	17	New sloped sidewalk, with metal rail and landing
9.	18	Two new signs below balcony (10'9" X 6'4" X 30")
10.	19	Existing balcony (7' X 3'0) (sign below)
11.	20	Existing balcony (11'4" X 4'6") (sign below)
12.	21	Existing door swing area (18.25 square feet)
13.	22	Existing cornice on exterior wall
14.	23	Existing basement below public right-of-way (50'6" X 6'6")
15.	24	Existing planter box (40 square feet)
16.	25	Existing planter box (28 square feet)
17.	26	Existing door swing area (2.5 square feet)
18.	28	Existing metal gates

\* The key number ties into the succeeding sheets showing pictures of the features' locations.



# **RAINFOREST CAFE - SAN ANTONIO**

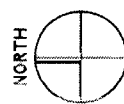
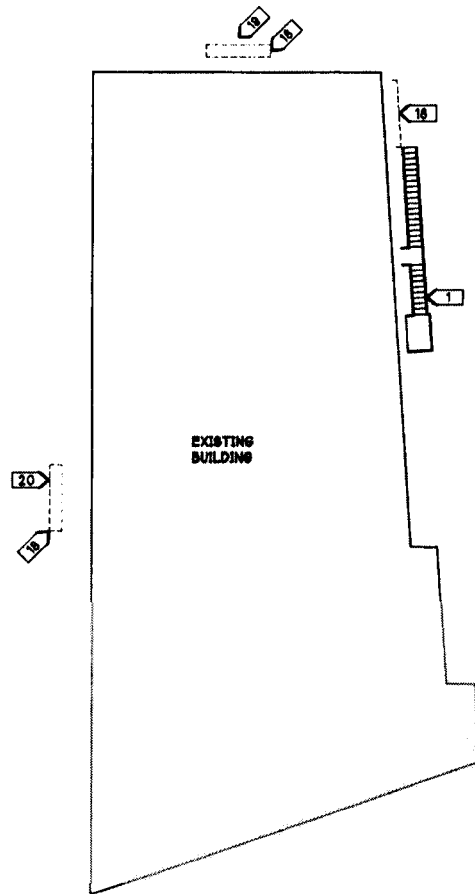
FIRST LEVEL (STREET LEVEL)

ASSESSMENT SUBMITTAL

06.31.05







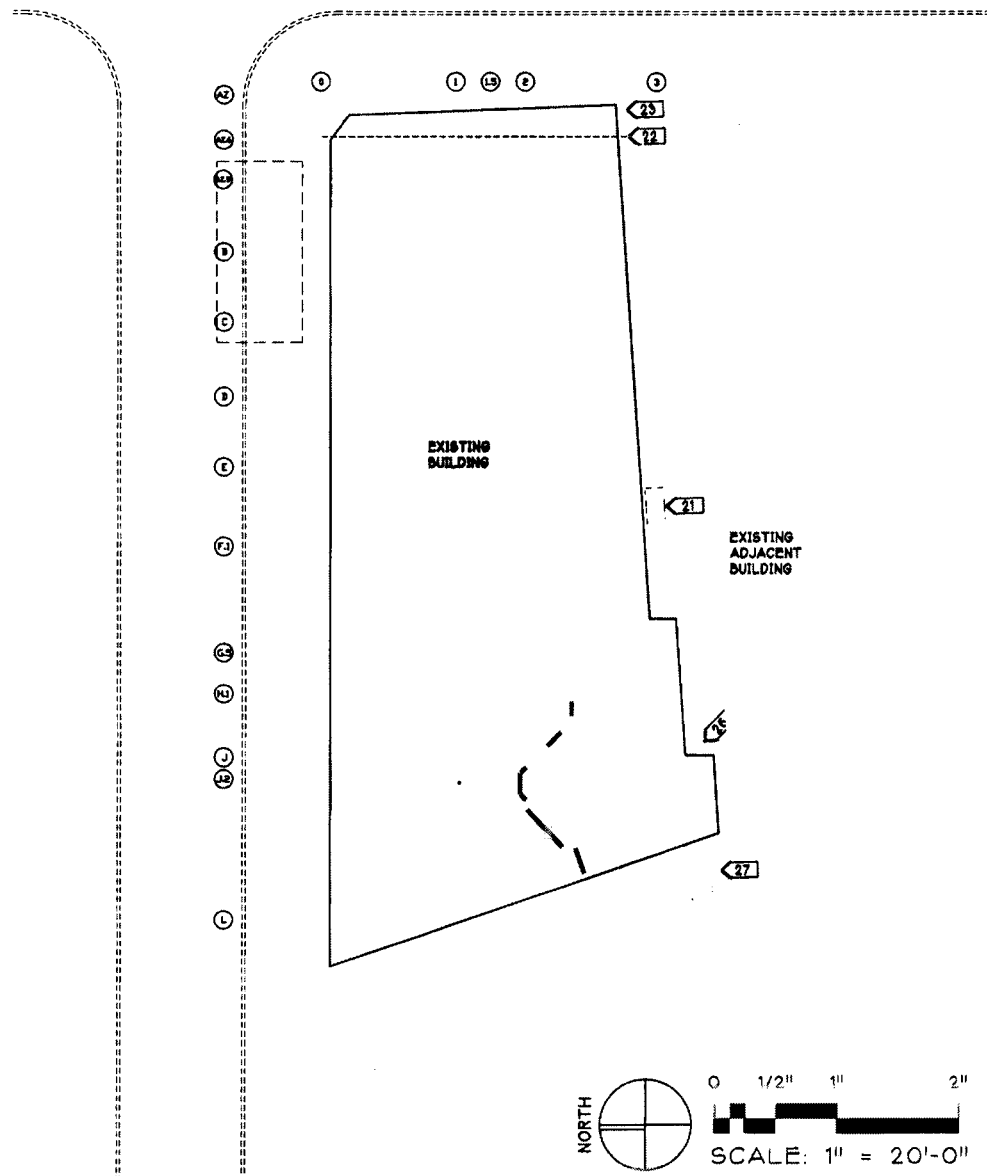
# **RAINFOREST CAFE - SAN ANTONIO**

SECOND LEVEL

ASSESSMENT SUBMITTAL

04.05.05



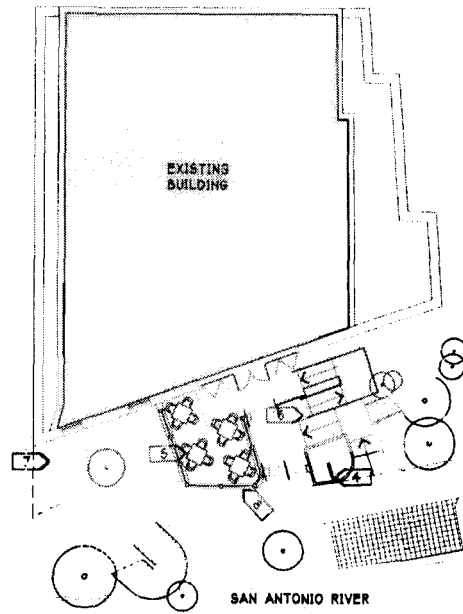


# **RAINFOREST CAFE - SAN ANTONIO**

BASEMENT LEVEL (BELOW STREET LEVEL)

ASSESSMENT SUBMITTAL





0 1/2" 1" 2"

SCALE: 1" = 20'-0"

# **RAINFOREST CAFE - SAN ANTONIO**

RIVERWALK LEVEL

ASSESSMENT SUBMITTAL

05.17.05



## Exhibit C

### Memorandum of License Agreement

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This is a Memorandum of License Agreement ("Agreement") entered into by and between Licensee and the City of San Antonio, a Texas municipal corporation (Licensor), acting by and through its City Manager, or designee, pursuant to the Authorizing Ordinance.

**Authorizing Ordinance  
(No. and Date):**

**Licensee:** Rainforest Café, Inc.

**Licensee's Address:** % Jeff Cantwell, Sr. Vice President, Development,  
Landry's Restaurants, Inc., 1510 W. Loop S., Houston,  
Texas 77027

**Term:** 25 Years from the Effective Date

**Premises:** Public right-of-way around the Chandler Building, 110  
E. Crockett, San Antonio, Bexar County, Texas

**Scope of License:** Rights to encroachments described on Exhibit A.

**Effective Date:** The effective date of the Authorizing Ordinance.

**Licensor's Address:** City Clerk, City of San Antonio, P.O. Box 839966/2nd  
Floor, City Hall, San Antonio, Texas 78283-3966

Licensor has granted a license to Licensee as described above. For more detailed terms, refer to the License Agreement.

The License is personal to Licensee and cannot be assigned or sublicensed except as provided in the License.

EXECUTED to be effective 10 days after passage of the Authorizing Ordinance ("Effective Date").

**Licensors:**

**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Licensee:**

**Rainforest Café, Inc.,** a Texas Corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ of the City of San Antonio, a Texas municipal corporation, on  
behalf of said municipal corporation.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, in and for State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ of Landry's Restaurants, Inc., on behalf of that entity in the  
capacity stated.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, in and for State of Texas

My Commission Expires: \_\_\_\_\_

After Recording Return to:

City of San Antonio  
Department of Asset Management  
P.O. Box 839966/2nd Floor, Municipal Plaza  
San Antonio, Texas 78283-3966  
Attn: Property Disposition Manager

## **Exhibit D**

June 10, 2005

Landry's Restaurants, Inc.  
Attn: Jeff Cantwell, Sr. VP of Dev.  
c/o Kurt Hagen  
Director of Construction  
2051 Killebrew Dr., Suite 308  
Bloomington, MN 55425

Re: S. P. No. 1191—Request for a License to use Public Rights of Way over  
under Crockett and Losoya Streets for an existing basement, seven (7)  
balconies, two (2) planter boxes, a fire escape, a cornice and two (2) new  
signs at 110 East Crockett Street in NCB 914

Dear Mr. Hagen:

With reference to the captioned project, please be advised that the City of San Antonio has now completed the canvassing process and will recommend approval of your request subject to the following conditions:

### PLANNING DEPARTMENT

Approved provided new sidewalks match existing sidewalks.

### PUBLIC WORKS DEPARTMENT

Approved provided that the proposed construction of the ramp and landing on the north side (Crockett St.) of the building meet City of San Antonio (COSA) accessibility manual requirements and American Disabilities Act (ADA) standards; the proposed signs that are to be placed below existing balconies must allow for pedestrian protected zone as per ADA standards; and patio improvements must meet COSA accessibility requirements and ADA standards.

### DEVELOPMENT SERVICES DEPARTMENT

Approved provided all sidewalk modifications comply with COSA and ADA standards; and new sidewalk lighting is compatible with existing streetlights.

### SAN ANTONIO WATER SYSTEM

Approved provided perpetual easements are reserved for all existing water and/or sewer facilities and petitioners must allow access to any such utilities for inspection, operational and maintenance purposes.

Landry's Restaurants, Inc.  
Attn: Jeff Cantwell, Sr. VP of Dev.  
c/o Kurt Hagen  
Director of Construction  
S.P. 1191 / June 10, 2005

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The fee established for this license agreement is \$21,117.00 for a 10-year term. The City of San Antonio must be formally released from any and all liabilities, which may be incurred in connection with this request, and a Certificate of Insurance must be provided along with a fully completed and signed Discretionary Contracts Disclosure form which is enclosed for your convenience.

If you concur with the above mentioned conditions, please countersign this letter in the space provided below and return to the undersigned. *Upon receipt of this signed Letter of Agreement, the License Agreement, the Certificate of Insurance, the Discretionary Contracts Disclosure form and the fee we will continue processing your request.*

This Letter of Agreement is being offered by the City of San Antonio only to the above named petitioner and will expire thirty (30) days after the date of issuance unless a specific extension is requested by the petitioner and granted by the City.

Sincerely,

Shawn P. Eddy  
Special Projects Manager  
Property Disposition Division

SPE/ma

AGREED AS TO TERMS AND CONDITIONS

**PETITIONER**

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date